



# THE ATTORNEY GENERAL OF TEXAS

WAGGONER CARR  
ATTORNEY GENERAL

AUSTIN, TEXAS 78711

February 16, 1966

*overrules*  
0-3820-A  
0-4269  
0-5681  
0-6805  
} *where  
conflicts*

Honorable James E. Barlow  
Criminal District Attorney  
Bexar County  
San Antonio, Texas

Opinion No. (C-612) V-469  
Re: Whether paragraph (b)  
of Article 53.07 V.C.C.P.  
becomes void and inoperative  
due to the holding in AG  
Opinion C-497 that para-  
graphs (a) and (d) are void,  
being in conflict with Sec.  
61 of Article XVI of the  
Texas Constitution and re-  
lated question.

Dear Mr. Barlow:

In an opinion request of this office you ask our opinion on two (2) questions involving Article 53.03, Code of Criminal Procedure of Texas, 1966. The two questions you pose are as follows:

- "1. Does paragraph (b) of Article 53.07, CCP become void and inoperative due to your holding in Attorney General Opinion C-497 that paragraphs (a) and (d) are void, being in conflict with Section 61 of Article XVI of the Texas Constitution?
- "2. If paragraph (b) of Article 53.07, CCP is sustained, what is the extent of its coverage?"

As you point out in your request, Article 53.07, Vernon's Code of Criminal Procedure which became effective January 1, 1966, purported to make it mandatory that all Justices of the Peace in Texas be compensated on a salary rather than a fee basis. On August 31, 1965, in Opinion No. C-497, this office held unconstitutional Sections (a) and (d) of Article 53.07, which two sections in effect set out that after January 1, 1966, all of the Justices of the Peace in Texas will be on a salary basis. We specifically pointed out in that opinion that its application extended only to Sections (a) and (d). You now ask whether or not that holding rendered inoperative Section (b) of said Article. Said Section (b) states as follows:

"All fines imposed by justices of the peace and all trial fees and other fees which justices of the peace are required by law to collect shall be deposited to the credit of the Officers' Salary Fund of the county, or whichever fund is used to pay the salaries of district, county or precinct officers."

It is our opinion that Article 53.07 (b) is not rendered void or inoperative by our holding in Opinion No. C-497. Article 54.01, Vernon's Code of Criminal Procedure, 1966 entitled "Severability Clause", reads as follows:

"If any provision, section or clause of this Act or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications hereof which can be given effect without the invalid provision, section or clause, and to this end the provisions of this Act are declared to be severable."

In 12 Tex. Jur. 2nd, 394, Constitutional Law, Sec. 49, is found the following statement concerning the affect of having a severability clause:

". . . When such a provision is found in a statute the courts will retain all the valid portions of the statute even though they would have declared the entire act invalid without the saving clause. This rule, however, will not be extended to uphold the validity of a portion of an act if that portion is wholly dependent on the invalid portion."

In our opinion, Section (b) of Article 53.07, is not wholly dependent on Sections (a) and (d) of that Article. Although on its face subsection (b) would appear to have the purpose of implementing subsections (a) and (d), it cannot be said that this is its sole objective. Nor can it be said that it could not be placed into effective operation without subsection (a) and/or (d). It is our opinion, therefore, that Opinion Number C-497 does not render inoperative or void Section (b) of Article 53.07.

This leads us to your second inquiry. If subsection (b) of Article 53.07 is valid, what fines are required to be

placed in the Officers Salary Fund? Article 16, Section 24, Constitution of the State of Texas, states as follows:

"The Legislature shall make provision for laying out and working public roads, for the building of bridges and for utilizing fines, forfeitures, and convict labor to all these purposes."

We do not construe this provision to make it mandatory that all fines be used for the laying out and working of public road and/or bridges, but rather that it directs the Legislature to utilize as it sees fit all or part of fines for those purposes. Therefore, the fact that Article 53.07, directs that the fines collected by Justices of the Peace be paid into the Officers Salary Fund does not place it in conflict with the above set out constitutional provision.

Article 670ld, Sec. 144, Vernon's Civil Statutes, entitled Disposition of Fines and Forfeitures, is as follows:

"Fines collected for violation of any highway laws as set forth in this Act shall be used by the municipality or the counties in which the same are assessed and to which the same are payable in the construction and maintenance of roads, bridges, and culverts therein and for the enforcement of the traffic laws regulating the use of the public highways by motor vehicles and motorcycles and to help defray the expense of county traffic officers."

Also, there are numerous similar statutes relating to game, fish and oyster laws. One such example is Article 912, Vernon's Penal Code, which states, in part, as follows:

"Section 1. It shall be the duty of any justice of the peace, clerk of any court, or any other officer of this state, receiving any fine or penalty imposed by any court for violation of any of the laws of this state pertaining to the protection and conservation of wild birds, wild fowl, wild animals, fish, oysters and other wild life . . . to remit said fine or penalty. . . to the Game, Fish and Oyster Commission. . .

In justice court cases the amount to be remitted to said commission shall be eighty-five (85) per cent of such fines and penalties."

Obviously, the new Code of Criminal Procedure and particular Article 53.07 would be the latest expression of Legislative intent concerning the disposition of fines assessed in Justice Courts. The favored rule of construction is to reconcile the provisions of conflicting statutes if at all possible and let them both stand. In 53 Tex. Jur. 2nd 150, Statutes, Sec. 102, is found the following statement:

"Where there is no expressed repeal the presumption is that in enacting a new law the Legislature intended the old statute to remain in operation. The two acts will persist unless the conflicting provisions are so antagonistic and repugnant that both can not stand... If by any reasonable construction two acts or statutory provisions can be reconciled and so construed that both may stand, one will not be held to repeal the other."

Also, it is observed that Article 53.07, is a general statute pertaining to all fines while Article 6701 (d), Section 144 and Article 912 are special statutes dealing with specified fines. A rule of statutory construction employed as an aid in determining legislative intent which we feel is applicable is stated in 39 Tex. Jur. 149, Statutes, Sec. 81, which is as follows:

"The enactment of a general law does not ordinarily operate as a repeal of a particular or special law by implication, although both relate to the same subject matter. On the contrary both statutes are permitted to stand, and the general law is applicable to all cases not embraced by the specific act. In other words, the particular act is construed as constituting an exception to the general law. This is said to be a settled rule of construction, based upon the presumption that a specific statute evidences the intention of the legislature more clearly than a general one, and therefore should control..."

We believe that Article 670ld, Article 912 and Article 53.07 fall within the above quoted exceptions. Effect must be given to all of these articles if possible. Article 912 and the other statutes relating to game and fish are specific with regard to the fund into which fines will be paid. We are of the opinion that when a specific statute such as this is construed in connection with Article 53.07 which is a general statute, the specific will control and all fines imposed by any court for violation of the laws of this state pertaining to game and fish and other wild life will be paid into the fund designated by the specific statutes.

With regard to Article 670ld, Section 144, it is noted that the fines collected for the violation of highway laws are payable to the road and bridge fund of the particular county but may also be used for the enforcement of traffic laws regulating the use of public highways. The payment of justice of the peace salaries certainly is part of the enforcement of the traffic laws of the public highways. Since justice of the peace tribunals are the primary tribunals for the disposition of these types of cases, we see no reason why some portion of the fines collected in a county could not be designated for the Officers Salary Fund of that county and be used to pay the salary of the particular justices of the peace of that county. Otherwise, Article 670ld dictates that all fines collected for violation of highway laws shall be paid into the road and bridge fund of the county.

On the other hand, Article 53.07 will control with regard to fines where there are no special statutes dealing with those types of fines, and those fines shall be paid into the Officers Salary Fund of the county as designated by Article 53.07. All fees collected by a Justice of the Peace shall be paid into the Officer's Salary Fund in accordance with Article 53.07. Attorney General's Opinions, Numbers O-3820A (1941), O-4269 (1941), O-5681 (1943), O-6805 (1945) and V-469 (1947) and any other opinions, if any, in conflict with the opinions expressed herein are overruled to the extent of such conflict.

#### S U M M A R Y

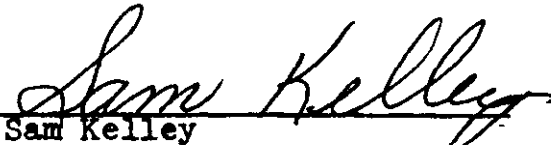
Paragraph (B) of Article 53.07, Code of Criminal Procedure of Texas, 1966, is not void and in-operative due to the holding in Attorney General's Opinion C-497. Article 53.07, V.C.C.P. controls the disposition of all fines collected in justice of the peace court which are not otherwise covered

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by a special statute designating the fund into  
which a particular fine is paid.

Yours very truly,

Waggoner Carr  
Attorney General of Texas

By   
Sam Kelley  
Assistant Attorney General

SK/lh

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